

APPEAL NO. 030454
FILED MARCH 25, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 21, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 23%. The claimant appealed, arguing that the IR of the designated doctor, Dr. K is against the great weight of the other medical evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to both upper extremities on _____, and that she reached maximum medical improvement on March 11, 2002. The evidence reflected that the designated doctor chosen by the Texas Workers' Compensation Commission (Commission), Dr. K, examined the claimant on May 10, 2002, and assigned a 23% IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). The claimant's treating doctor, Dr. S assigned an IR of 36%. Dr. S testified at the CCH and both his testimony and documentary evidence admitted into evidence at the CCH indicate his disagreement with Dr. K's assigned IR. In a chart note dated June 4, 2002, Dr. S notes that the discrepancy in their respective opinions is caused by Dr. K's failure to rate the median nerve. Dr. K responded to the concerns of Dr. S in correspondence dated July 9, 2002, after receiving a request for clarification from the Commission. Dr. K noted that the claimant had decreased motor power in both the right and left hand, which clinically, he felt was attributed to the ulnar nerve below the forearm, and further noted that sensory examination at the median nerve was intact. Dr. K concluded that he stood by the previous IR of 23%. In evidence were also IRs assigned by a carrier selected required medical examination (RME) doctor and a peer review doctor. The carrier selected RME, who examined the claimant, assigned a 23% IR, assigning an impairment for both the ulnar and median nerves.

Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. Whether or not the great weight of the other medical records overcomes the presumption that the designated doctor's certification is correct is a question of fact for the hearing officer to resolve. In the instant case, the hearing officer determined that the conflicting medical evidence constituted a mere difference of medical opinions. Nothing in our review of the records indicates that this determination is so against the great weight and preponderance of the evidence as to

be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We find no merit in the claimant's contention that the hearing officer did not consider all of the evidence presented at the CCH.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge